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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Feb 22, 2022

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ANNE MARIE GRECO and IAN DAVID
SUTHERLAND,
Plaintiffs,
v.
NORTHWELL HEALTH, INC.,
Defendant.

No. 2:21-CV-00188-SAB

**ORDER GRANTING
DEFENDANT'S MOTION TO
DISMISS; CLOSING FILE**

Before the Court are Plaintiffs' Motion for Summary Judgment, ECF No. 7, and Defendant's Motion to Dismiss Pursuant to FRCP 12 and FRCP4, ECF No. 9. Plaintiffs are representing themselves in this matter. Defendant is represented by Jennifer Oetter. The Court has determined that oral argument is not necessary. Local Rule 7.1(i)(3)(B)(iii).

Plaintiffs filed this action on June 10, 2021, ECF No. 1. Plaintiffs are Washington residents residing in Danville, Washington. Defendant is a non-profit corporation based in New York state. Defendant is the corporate parent of several hospitals and outpatient facilities in New York. It appears the basis of Plaintiff's claims arise out of medical care provided between June 4-9, 2019 in Huntington, New York.

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1 On January 14, 2022, Plaintiffs filed a Declaration of Service indicating that
2 Defendant was served on December 20, 2021. ECF No. 4. In his Declaration, Mark
3 A. Gloade, Senior Vice President and Deputy General Counsel for Defendant,
4 stated that on December 21, 2021, an individual from ABC Legal Hand delivered a
5 document titled “Summons in Civil Action” to a legal assistant in Defendant’s
6 Office of Legal Affairs. ECF No. 10. However, the document was one page, and
7 did not include a copy of the Complaint.

8 In their Complaint, Plaintiffs make several allegations, but fail to provide the
9 specific factual allegations, including who, what, when, where and how. For
10 instance, the following allegations are presented in Plaintiffs’ Complaint: (1)
11 Defendant administered opioids of dosage sufficient for other medical
12 professionals to describe the dosage as “attempted murder;” (2) Defendant failed to
13 provide adequate monitoring of Plaintiff’s vitals per standard medical procedure or
14 Defendant’s own posted policies; (3) Defendant failed to follow medical advice
15 suggested by Defendant’s relevant medical specialists; (4) Defendant refused to
16 update Plaintiff’s Do Not Resuscitate Order upon Plaintiff’s request; (5) Defendant
17 failed to follow Plaintiff’s wishes to speak with medical proxy instead of Plaintiff
18 when Plaintiff felt incapable of informed consent; (6) Defendant made misleading
19 and libelous statements in their medical records and inadequately portrayed
20 Plaintiff’s medical condition; (7) Defendant failed to provide medical records in a
21 reasonable and timely fashion upon Plaintiffs’ request, providing Plaintiffs with
22 printed copies of several thousand pages of medical records several weeks after the
23 initial request, rather than the digital copies requested, and then proceeded to
24 request cop fees in excess of \$2,000; (8) Defendant administered medication
25 known by modern medical knowledge to be inadvisable for Plaintiff’s condition;
26 (9) Defendant referenced an employee as an expert despite their statements that
27 Plaintiff’s condition does not cause pain, which is a primary part of the diagnostic
28 criteria for Plaintiff’s condition; (10) Defendant refused to follow the advise of

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1 experts in Plaintiff's condition who previously treated Plaintiff; and (11)
 2 Defendant handled Plaintiff's medical marijuana despite not being registered as
 3 Plaintiff's caretaker.

4 **1. Plaintiff's Motion for Summary Judgment**

5 On January 21, 2022, Plaintiffs filed a Motion for Summary Judgment.
 6 Plaintiff did not file any accompanying Affidavits or Declarations in support of
 7 their Motion.¹

8 It appears that the basis for Plaintiffs requesting summary judgment is that
 9 because Defendant failed to respond to the Complaint, all facts asserted in their
 10 motion are taken as undisputed and as such, Plaintiffs are entitled to their requested
 11 remedies. Defendant asserts that a motion for summary judgment is premature, and
 12 questions of fact remain whether the Court has personal jurisdiction over
 13 Defendant, whether the Complaint was served on time, and whether the service of
 14 process was sufficient. Defendant also argues it would be inappropriate to consider
 15 the facts settled as discovery has not yet begun.

16 Summary judgment is appropriate "if the movant shows that there is no
 17 genuine dispute as to any material fact and the movant is entitled to judgment as a
 18 matter of law." Fed. R. Civ. P. 56(a). There is no genuine issue for trial unless
 19 there is sufficient evidence favoring the non-moving party for a jury to return a
 20 verdict in that party's favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250
 21 (1986). The moving party has the initial burden of showing the absence of a
 22 genuine issue of fact for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986).

23

24¹ Fed. R. Civ. P. 56(c)(1)(A) provides: (c) Procedures.

25 (1) Supporting Factual Positions. A party asserting that a fact cannot be or is
 26 genuinely disputed must support the assertion by:

27 (A) citing to particular parts of materials in the record, including
 28 depositions, documents, electronically stored information, affidavits or
 declarations, stipulations (including those made for purposes of the motion only),
 admissions, interrogatory answers, or other materials.

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1 If the moving party meets its initial burden, the non-moving party must go beyond
 2 the pleadings and “set forth specific facts showing that there is a genuine issue for
 3 trial.” *Anderson*, 477 U.S. at 248.

4 In addition to showing there are no questions of material fact, the moving
 5 party must also show it is entitled to judgment as a matter of law. *Smith v. Univ. of*
6 Wash. Law Sch., 233 F.3d 1188, 1193 (9th Cir. 2000). When considering a motion
 7 for summary judgment, a court may neither weigh the evidence nor assess
 8 credibility; instead, “the evidence of the non-movant is to be believed, and all
 9 justifiable inferences are to be drawn in his favor.” *Anderson*, 477 U.S. at 255.

10 Here, the Court declines to view the facts as undisputed as requested by
 11 Plaintiffs. At this stage of the proceedings, if Plaintiffs believed Defendant’s non-
 12 responsiveness entitled them to relief, the proper motion would be a motion for
 13 default judgment pursuant to Fed. R. Civ. P. 55, rather than a motion for summary
 14 judgment under Fed. R. Civ. P. 56. That said, the Court declines to entertain such a
 15 motion for the following reasons. First, there are questions of fact regarding
 16 whether the Complaint was properly served. Second, cases should be decided on
 17 the merits when reasonably possible and therefore, it is necessary for discovery to
 18 commence before entering judgment in favor of any party. Third, Plaintiffs raise
 19 serious allegations of medical malpractice and are seeking significant damages.
 20 Such claims should be litigated on the merits. For these reasons, the Court denies
 21 Plaintiffs’ Motion for Summary Judgment.

22 **2. Defendant’s Motions to Dismiss Pursuant to FRCP 12 and FRCP 4**

23 Defendant asks the Court to dismiss Plaintiffs’ claims with prejudice
 24 because the Court does not have personal jurisdiction over it, the Complaint was
 25 not timely served, service of process was insufficiently executed, venue is
 26 improper with this Court, and Plaintiffs’ fail to state a claim upon which relief may
 27 be granted. Defendant also asserts that Plaintiffs have failed to join necessary
 28 parties.

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Background Facts

According to Defendant, it is a domestic not-for-profit corporation based in New York. It is the corporate parent of several hospitals and outpatient facilities in New York state. Defendant itself does not render patient care and has never provided or rendered patient care. It has no facilities in Washington and does no business in Washington.

Motion Standard

Rule 12(b)(2) governs the dismissal of an action based on lack of personal jurisdiction. When a defendant moves to dismiss a complaint for lack of personal jurisdiction, the plaintiff bears the burden of demonstrating that jurisdiction is appropriate. *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 799 (9th Cir. 2004). In ruling on a 12(b)(2) motion, the Court may, in its discretion, order discovery, hold an evidentiary hearing, or rely only on the written submissions. *Doe v. Unocal Corp.*, 248 F.3d. 915, 922 (9th Cir. 2001). If the motion is based on written materials rather than an evidentiary hearing, “the plaintiff need only make a *prima facie* showing of jurisdictional facts.” *Id.* A *prima facie* showing means that the plaintiff has produced admissible evidence, which if believed, is sufficient to establish the existence of personal jurisdiction. *Ballard v. Savage*, 65 F.3d 1495, 1498 (9th Cir. 1995).

20 Although the plaintiff cannot “simply rest on the bare allegations of its
21 complaint and must come forward with facts, by affidavit or otherwise, supporting
22 personal jurisdiction, uncontested allegations in the complaint must be taken as
23 true.” *Amba Marketing Systems, Inc. v. Jobar International, Inc.*, 551 F.2d 784,
24 787 (9th Cir. 1977). Conflicts between parties over statements contained in
25 affidavits must be resolved in the plaintiff’s favor. *Id.*

A. Personal Jurisdiction

27 The power of a federal court presiding over a case based on diversity of
28 citizenship to exercise personal jurisdiction over a nonresident defendant turns on

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1 two independent considerations: whether an applicable state rule or statute
 2 potentially confers personal jurisdiction over the defendant, and whether assertion
 3 of such jurisdiction accords with constitutional principles of due process. *Data*
 4 *Disc, Inc. v. Sys. Tech. Assoc.*, 557 F.2d 1280, 1286 (9th Cir. 1977) (citation
 5 omitted). Washington's long-arm statute extends the court's personal jurisdiction
 6 to the broadest reach that the United States Constitution permits. *Byron Nelson Co.*
 7 *v. Orchard Management Corp.*, 95 Wash.App. 462, 465 (1999). Because
 8 Washington's long-arm jurisdictional statute is coextensive with federal due
 9 process requirements, the jurisdictional analysis under state law and federal due
 10 process are the same. *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797,
 11 800-01 (9th Cir. 2004).

12 The Due Process Clause protects a defendant's liberty interest in not being
 13 subject to the binding judgments of a forum with which it has established no
 14 meaningful contacts, ties, or relations. *Burger King Corp. v. Rudzewicz*, 471 U.S.
 15 462, 471-72 (1985). Thus, for a court to exercise personal jurisdiction over a
 16 nonresident defendant, that defendant must have at least "minimum contacts" with
 17 the relevant forum such that the exercise of jurisdiction "does not offend traditional
 18 notions of fair play and substantial justice." *Id.* (quoting *International Shoe Co. v.*
 19 *Washington*, 326 U.S. 310, 316 (1945)). In conducting the inquiry regarding the
 20 minimum contacts, the court should focus on the relationship among the defendant,
 21 the forum and the litigation. *Walden v. Fiore*, 571 U.S. 277, 284 (2014). For a
 22 State to exercise jurisdiction consistent with due process, the defendant's suit-
 23 related conduct must create a substantial connection with the forum State. *Id.* This
 24 means "the relationship must arise out of contacts that the defendant *himself*
 25 creates with the forum State. *Id.* (emphasis in original). Additionally, the focus
 26 should be on the defendant's contacts with the forum State itself, not the
 27 defendant's contact with a person who reside there. *Id.* Absent consent, a basis for
 28 service of a summons on the defendant is a prerequisite to the exercise of personal

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1 jurisdiction. *BNSF Ry. Co. v. Tyrell*, __ U.S. __, 137 S.Ct. 1549, 1556 (2017).

2 Depending on the nature of a foreign defendant’s contacts with the forum, a
 3 federal court may obtain either specific or general jurisdiction over him. *Glencore*
 4 *Grain Rotterdam B.V. v. Shivnath Rai Harnarain Co.*, 284 F.3d 1114, 1123 (9th
 5 Cir. 2002).

6 General jurisdiction exists over a non-resident defendant when there is
 7 “continuous and systematic general business contacts that approximate physical
 8 presence in the forum state.” *Schwarzenegger*, 374 F.3d at 801. General
 9 jurisdiction over a corporation is appropriate only when the corporation’s contacts
 10 with the forum state “are so constant and pervasive as to render it essentially at
 11 home” in the state.” *Easter v. Am. W. Fin.*, 381 F.3d 948, 960-61 (9th Cir. 2004).
 12 “Put another way, a defendant must not only step through the door, it must also sit
 13 down and make itself at home. *Tuazon v. R.J. Reynolds Tobacco Co.*, 433 F.3d
 14 1163, 1169 (9th Cir. 2006).

15 This is an exacting standard, because, as the Ninth Circuit explains, “a
 16 finding of general jurisdiction permits a defendant to be haled into court in the
 17 forum state to answer for any of its activities anywhere in the world.” *Id.* (citation
 18 omitted). “Factors to be taken into consideration are whether the defendant makes
 19 sales, solicits or engages in business in the state, serves the state’s markets,
 20 designates an agent for service of process, holds a license, or is incorporated
 21 there.” *Bancroft & Masters, Inc. v. Augusta Nat’l Inc.*, 223 F.3d 1082, 1086 (9th
 22 Cir. 2000).

23 “The general jurisdiction inquiry does not focus solely on the magnitude of
 24 the defendant’s in-state contacts.” *Daimler AG v. Bauman*, 571 U.S. 117 139, n.20
 25 (2014). In-state business does not suffice to permit the assertion of general
 26 jurisdiction over claims that are unrelated to any activity occurring in Washington.
 27 *Tyrell*, 137 S.Ct. at 1559. Occasional sales to residents of the forum state are
 28 insufficient to create general jurisdiction. See *Brand v. Menlove Dodge*, 796 F.2d

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1 1070, 1073 (9th Cir. 1986). The due process constraints apply to all assertions of
 2 general jurisdiction over nonresident defendants; the constraint does not vary with
 3 the type of claim asserted or business enterprise sued. *Tyrell*, 137 S.Ct. at 1558-59.

4 In order to establish specific jurisdiction over Defendant, Plaintiff must
 5 show that Defendant purposely established significant contacts with Washington
 6 and that the action arises out of or is related to those contacts. *Burger King Corp.*,
 7 471 U.S. at 471-73. Washington law requires that in order to establish specific
 8 jurisdiction over Defendant, Plaintiff must show three factors: (1) Defendant must
 9 have purposefully done some act or consummated some transaction in
 10 Washington; (2) Plaintiff's cause of action must arise from, or be connected with,
 11 such act or transaction; and (3) the exercise of jurisdiction
 12 must be reasonable in that it must not offend traditional notions of fair play and
 13 substantial justice. *See Wash. Rev. Code 4.28.185(1)(a); Failla v. FixtureOne*
 14 *Corp.*, 181 Wash. 2d 642, 650 (2014) (citations omitted).

15 Here, Plaintiffs have not shown, nor can they show that the Court has
 16 personal jurisdiction over Defendant. It is undisputed that Defendant does no
 17 business in Washington. As such, Defendant has no contacts with Washington to
 18 meet the requirement for general jurisdiction. Similarly, Plaintiffs cannot show
 19 specific personal jurisdiction over Defendant. Plaintiffs have not alleged that
 20 Defendant took any action in Washington that is tied to their causes of action. It
 21 appears from the Complaint that the only relation Defendant has to Washington is
 22 the fact that Plaintiffs sought medical care in New York, then went back to their
 23 home in Washington. This is not sufficient under the law of Washington or the
 24 U.S. Constitution for this Court to have personal jurisdiction over Defendant.

25 Because the Court does not have personal jurisdiction over Defendant, it
 26 declines to address its remaining arguments. The above-captioned case is
 27 dismissed, without prejudice. *See Fed. R. Civ. P. 4(m); Grigsby v. CMI Corp.*, 765
 28 F.2d 1369, 1372 n.5 (9th Cir. 1985).

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1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. Plaintiffs' Motion for Summary Judgment, ECF No. 7, is **DENIED**.

3 2. Defendant's Motion to Dismiss Pursuant to FRCP 12 and FRCP4,
4 ECF No. 9, is **GRANTED**.

5 3. The above-captioned matter is **DISMISSED**, without prejudice.

6 **IT IS SO ORDERED.** The District Court clerk is hereby directed to enter
7 this Order, provide copies to pro se Plaintiffs and counsel, and close the file.

8 **DATED** this 22nd day of February 2022.



11 A handwritten signature in blue ink that reads "Stanley A. Bastian".
12

13 Stanley A. Bastian
14 Chief United States District Judge

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